IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4107 of 2006
In
CIVIL APPLICATION No. 12524 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INS. CO. LTD - Appellant(s)
Versus
NANDUBEN MADIYABHAI DITYABHAI BARIA & 6 - Defendant(s)

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Appearance :
MR SHASHIKANT S GADE for Appellant(s) : 1,
MR ARPIT A KAPADIA for Defendant(s) : 1,4 - 5.
None for Defendant(s) : 2 - 3,6 - 7.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

The appeal is admitted. Mr. Arpit Kapadia waives service of notice of admission of the appeal for respondent Nos.1 to 5. In view of the contentions raised by the appellant-insurance Company, it is not necessary to issue notice to respondent Nos.6 and 7, driver and owner of the vehicle involved in the accident.

2. In this appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant-insurance Company has challenged the judgment and award dated 24/01/2005 of the Motor Accident Claims Tribunal (Aux.), Panchmahals at Godhra in M.A.C.P No.2711 of 1999 awarding compensation of Rs.5,17,100/- together with proportionate costs and interest at the rate of 9% per annum on account of death of Madiyabhai Dityabhai Baria.

3. On 08/12/1999, Madiyabhai Dityabhai Baria, (the deceased), was walking on the road to Kalol. At that time, the jeep insured by the appellant-insurance Company knocked down the deceased who succumbed to the injuries during treatment at the hospital. The widow, two minor children and the parents of the deceased filed claim petition for compensation of Rs.10,00,000/-.

4. The Tribunal held that the accident occurred due to sole negligence of the jeep driver. On the question of compensation, the Tribunal did not accept that the deceased was earning Rs.4,500 per month from

Centering work as averred by the claimants, but the Tribunal assessed the monthly income of the deceased at Rs.2,100/- and on that basis assessed the future income at Rs.3,150/-. Since the deceased was aged about 25 years, the Tribunal adopted multiplier of 18 years, relying on the Second Schedule to the Motor Vehicles Act, 1988. After deducting 1/3rd amount as the amount which the deceased would have spent on himself had he remained alive, the Tribunal awarded compensation of Rs.4,53,600/- for the loss of dependency benefit and awarded amounts under various heads as under:-

4,53,600/-	Loss of dependency
15,000/-	Pain, shock and suffering
20,000/-	Global conventional amount
8,500/-	Transportation and funeral expenses
4,97,100/-	
20,100/-	Loss of consortium (to the wife only)
5,17,100/-	Total compensation

5. The appellant-insurance Company has mainly challenged the award on the ground that the amount of compensation awarded by the Tribunal is excessive. Mr. Gade, learned advocate for the appellant-insurance Company submits that the deceased did not have any regular employment, but was only doing casual labour work and therefore, the Tribunal erred in assessing the actual income of the deceased at Rs.2,100/- per month and the potential future income at Rs.3,150/- per month. According to Mr. Gade, the

compensation for loss of dependency benefit could have been assessed only by taking monthly income of the deceased at Rs.1,800/-, out of which the deceased would have spent 1/3rd of the amount on himself had he remained alive and therefore, compensation for loss of dependency benefit have been worked out at Rs.2,60,000/-. Mr. Gade has vehemently submitted that the award in excess of Rs.3 lacs is contrary to law and the award amount is accordingly required to be reduced from Rs.5,17,000/- to Rs.3,00,000/-.

6. Mr. Arpit Kapadia, learned advocate for respondent Nos.1 to 5 – original claimants, who had earlier appeared at the stage when the application of the insurance Company for condonation of delay was heard and decided, states that he has instructions to appear for the claimants in this appeal also. Mr. Kapadia has vehemently opposed the appeal and supported the award of the Tribunal. It is also submitted that considering the young age of the deceased (25 years) and the number of dependents surviving the deceased, the award is just and proper.

7. Having heard the learned advocates for the parties, we are of the view that in the facts and circumstances of the case, and particularly in view of the fact that the deceased was working as a casual masonry worker and also considering the fact that the deceased was doing such labour work in Dhanpur Taluka of Panchamahal District, it would be reasonable to assess the monthly income of the deceased at

Rs.1,800/- per month as on the date of the accident. Considering the young age of the deceased (25 years), we find some substance in the submission of Mr. Kapadia, learned advocate for the claimants that with the passage of time the income of the deceased would have gone up. It would, therefore, be reasonable to assess the potential future income of the deceased at Rs.2,700/- per month. Deducting 1/3rd amount therefrom as the amount which the deceased would have spent on himself had he remained alive, the dependency benefit would work out to Rs.1,800/- per month. Considering the age of the deceased, we are of the view that it would be reasonable to adopt multiplier of 17 years and accordingly, the compensation for loss of dependency benefit would work out to Rs.3,67,200/-. Adding thereto Rs.2,800/- as the funeral expenses, Rs.20,000/- under the conventional head of compensation for loss to the estate and also pain, shock and suffering undergone by the deceased before death and also Rs.10,000/- as compensation to the Widow for loss of consortium, the total amount of compensation comes to Rs.4,00,000/-. We do not disturb the apportionment made by the Tribunal in favour of the widow, children and parents of the deceased as contained in para-15 of the judgment. We also do not disturb the rate of interest awarded by the Tribunal being 9% from the date of the claim petition (27/12/1999) till realisation.

8. In the result, the appeal is partly allowed. The amount awarded by the Tribunal as compensation on account of death of Madiyabhai Dityabhai Baria is reduced from Rs.5,17,000/- to Rs.4,00,000/- with proportionate costs and interest from the date of the claim petition (27/12/1999) till realisation. The appellant-insurance Company shall deposit the aforesaid amount by 15/12/2006.

The amount deposited before this Court at the time of filing the appeal shall also be transmitted to the Tribunal by 15/12/2006.

Upon deposit/ transmission of the amounts as aforesaid, 90% of the amount payable to the widow, the entire amount payable to the minor claimants and 70% of the amount payable to the parents of the deceased shall be invested in more than one fixed deposits with a nationalized bank near the residence of the claimants for a period of five years with usual conditions about prohibition against premature encashment of/ encumbrance over the deposits, with permission to the claimants to withdraw interest monthly accruing on such fixed deposits and with a direction to the Bank not to permit the accounts of the claimants to be operated by any power of attorney holder, who is not a close relative of the claimants.

9. Since the appeal is disposed of, Civil Application for stay does not survive and the same is accordingly disposed of.

10. The learned advocate for the claimants is permitted to get direct service of this order effected on the appellant-insurance Company.

(M.S.SHAH,J.)

(AKIL KURESHI, J.)

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